

General Information Letter: A taxpayer may claim a credit on his or her individual income tax return for taxes paid on a composite return only if prior permission has been received from the Department.

October 4, 2006

Dear:

This is in response to your letter dated August 8, 2006. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at www.Iltax.com.

Your letter states as follows:

This letter is in response to a notice that the Illinois Department of Revenue sent to the above-referenced taxpayers and is written to request an approval letter allowing the taxpayers to claim credit for taxes paid on Mr. Z's behalf. We attach a copy of the notice for your reference. We attach a copy of the notice for your reference. We are sending a carbon copy as response to the notice.

Mr. Z is a member of COMPANY LLC, an LLC taxed as a partnership. The LLC had Illinois-source income in 2005. It filed a composite return for 2005 and remitted Illinois tax on Mr. Z's behalf.

Mr. Z had filed Illinois returns in previous years and made 2005 estimated payments. In order to get a refund for his payments, he filed a 2005 Form IL-1040 as a nonresident. The return includes all of the Illinois-source income for which tax was paid on the composite return. It includes a credit for the tax paid. We enclose a copy of the composite return, the Form IL-1040 and the Schedule K-1-P as substantiation.

Please send the taxpayers a letter permitting them to take credit for the tax paid on Mr. Z's behalf, so they can receive a refund for the excess Illinois taxes that they paid as estimated payments. Thank you for your help in resolving this matter.

RULING

Section 502(f) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/502(f)) authorizes the Department to promulgate regulations to permit nonresident individual partners of the same partnership (including members of an LLC taxed as a partnership) to file composite individual income tax returns reflecting the composite income of such individuals allocable to Illinois and to make composite individual income tax payments.

Pursuant to that authorization, the Department promulgated rules under Subpart O of the income tax regulations (86 Ill. Adm. Code § 100.5100 *et seq.*). Regulations section 100.5130 provides rules regarding the computation of composite income. Subsection (c) of that section states that the amount of composite income apportionable and allocable to Illinois shall not be reduced by the standard exemption.

Section 100.5100(e) of the regulations relates to taxpayers who have derived Illinois source income other than from the partnership or other composite return filer. The section allows such taxpayers to be included on the composite return, but states that no credit will be allowed on the taxpayer's individual return for their share of the composite tax payments, unless the partnership or other composite return filer files a petition with the Department of Revenue requesting permission for such credit to be claimed and the Department grants that petition. The section further provides that such petition must be filed prior to the end of the partnership's or other composite return filer's taxable year, and shall be granted upon clear demonstration that no other method of filing would achieve the same degree of administrative ease for both the Department and the taxpayer.

The 2005 composite Illinois income tax return filed by COMPANY, LLC reports your client's distributable share of Illinois net income of \$717,479 and corresponding tax of \$21,524. Your client's 2005 Form IL-1040 reports Illinois net income of \$729,990. The Form IL-1040 also claims a \$5,352 standard exemption amount and reports estimated tax payments of \$1,060. That the amount of composite income reported on COMPANY, LLC's composite return is less than the amount of Illinois income reported on your client's IL-1040 indicates that Regulations section 100.5100(e) applies in this case. As a result, no credit can be allowed on your client's individual return for his share of the composite tax payments because COMPANY, LLC failed to file the required petition.

However, examination of the composite return and your client's IL-1040 suggests that your client's only Illinois source income was from COMPANY, LLC. The difference between your client's share of composite income and the amount of Illinois net income reported on the IL-1040 is \$12,511. This same amount is reported by COMPANY, LLC as an "other expense item" on Line 31 of your client's Schedule K-1-P, but does not appear on your client's Form IL-1040. COMPANY, LLC reported business income apportionable to Illinois of \$67,657, which includes an addition modification for replacement tax deducted of \$109,359. Your client's distributable share of the LLC's business income would be \$20,297 (i.e. $30\% \times \$67,657$). The Form IL-1040 reports your client's distributable share of the LLC's addition modification of \$32,808 (i.e. $30\% \times \$109,359$), but fails to report the offsetting business expense item of \$12,511 (i.e. $\$32,808 - \$12,511 = \$20,297$). Therefore, it appears that your client does not have Illinois source income other than from COMPANY, LLC, but that you simply overstated your client's share of composite income on the Form IL-1040.

Assuming the analysis set forth in the preceding paragraph is correct, then your client does not have an underpayment for his 2005 taxable year. You should file a Form IL-1040-X (Amended Individual Income Tax Return) which reports \$0 income, deduction, and Illinois tax liability, and include a statement indicating that the Form IL-1040 is not required because the taxpayer's only Illinois source income has been reported on the composite return of COMPANY, LLC. You should also indicate that the original Form IL-1040 was filed only to claim a refund of the \$1,060 in individual estimated tax paid for 2005. Assuming such estimated tax payments were in fact made, it appears your client is entitled to a refund of \$1,060. Note that your client's share of composite income is not reduced by the standard exemption. You may wish to include a copy of this letter along with your client's IL-1040-X, which should be addressed to:

Illinois Department of Revenue
Attn: Debbie Heigert
P.O. Box 19007
Springfield, IL 62794-9007.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)